

**REMARKS/ARGUMENTS**

Claims 1-21 are now active in this application.

**OBJECTION TO THE DRAWINGS**

The Examiner objects to the drawings for failing to illustrate features of the invention specified in claims 2-9 and 12-20.

The objection is respectfully traversed as each of the features recited in claims 2-9 and 12-20 is illustrated in Figs. 5-7. In particular, each of the features recited in claims 2-9 and 12-20 is described from page 8, line 10 to page 10, line 19 with reference to the steps of the flow charts of Figs. 5-7 (see reference to each of these figures on page 8, line 9; page 9, line 14; and page 10, line 5).

As each of the features specified in claims 2-9 and 12-20 is illustrated in Figs. 5-7, withdrawal of the drawing objection is respectfully solicited.

**REJECTION OF CLAIMS UNDER 35 U.S.C. § 102 AND § 103**

I. Claims 1, 2, 4, 5, 7, 9, 11, 12, 14, 15, 17, 19 and 21 are rejected under 35 U.S.C. § 102(e) as being anticipated by Fujimoto et al. (USPN 6,035,074), for the reasons substantially of record.

The rejections are respectfully traversed.

The factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claimed invention such that the identically claimed invention is placed into possession of one having ordinary skill in the art. *Helifix Ltd. v. Blok-Lok, Ltd.*, 208 F.3d 1339, 200 U.S. App. LEXIS 6300, 54 USPQ2d 1299 (Fed. Cir. 2000);

*Electro Medical Systems S.A. v. Cooper Life Sciences, Inc.*, 34 F.3d 1048, 32 USPQ2d 1017 (Fed. Cir. 1994).

In the current Office Action, the Examiner asserts that “The cutting area itself is a frame around the face image which is display on color crystal display as shown by Fujimoto on col. 9, lines 42-45. Fujimoto on col. 9, lines 18-22, shows “face image data is subjected to complementary color data converting process and then displayed in reverse on color liquid crystal display”. However, the problem with the Examiner’s position is that he is impermissibly redefining the disclosure of Fujimoto et al. to meet the terms of the claims.

What Fujimoto et al. discloses is determining a recognized face image area and *forming a (rectangular) frame* so that the *frame* embraces the recognized face image area. There is no disclosure or suggestion in Fujimoto et al. that the *frame* embracing the recognized face image area ever has a color *based upon and extracted feature relating to image color of the image*. In fact, there is no description at all in Fujimoto et al. regarding the color of the *frame* embracing the recognized face image area.

What is to be colored (and is shown in reverse) in Fujimoto et al. is the recognized face image area that is embraced by the *frame* and NOT the frame itself. This is clearly seen in FIG. 9 where the frame itself is not indicated as being shown in reverse color as is the color of the recognized face image area (FIG. 7) that was initially recognized via color comparison. Furthermore, Fujimoto et al. clearly maintains a distinction throughout the description between the *frame* and the recognized face image area that is embraced by the *frame*. In this regard, Fujimoto et al. uses the word “frame” exactly as do Applicants; i.e., a perimeter, boundary, edge, etc., enclosing or bordering something.

There is additional support that this is what Fujimoto et al. intends by *frame*. The only other time that Fujimoto et al. uses the word “frame” is with respect to the designated face recognition colors that “enclosed by frames”. FIG. 13 shows a matrix of designated face recognition colors in the left center of FIG. 13. The commonly accepted definition of “enclose” is “to surround on all sides”. Since the drawings of Fujimoto et al. are in black and white, most of the frames and colors enclosed by the frames are black, so that the actual frame cannot be easily distinguished from the color that is enclosed by the frame. However, the colors depicted in column 2, rows 1 of 2 of the matrix of designated face recognition colors, as well as in columns 6 and 8, row 6, clearly indicate the discrete “frame” surrounding the designated face recognition colors.

Consequently, the Examiner cannot properly interpret the recognized face image area that is embraced by the *frame* as a “*frame*” that is “around the image”. While the recognized face image area that is embraced by the *frame* may have color based on a feature extracted from the image, this cannot be said to be the case for the *frame* that embraces the recognized face image area.

The above argued difference between the claimed device and method vis-à-vis the device and method of Fujimoto et al. undermine the factual determination that Fujimoto et al. identically describes the claimed inventions within the meaning of 35 U.S.C. § 102. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986). Applicants, therefore, submit that the imposed rejection of claims 1, 2, 4, 5, 7, 9, 11, 12, 14, 15, 17, 19 and 21 under 35 U.S.C. § 102 for lack of novelty as evidenced by Fujimoto et al. is not factually or legally viable and, hence, solicit withdrawal thereof.

**II.** Claims 3, 6, 8, 10, 13, 16 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fujimoto et al., for the reasons substantially of record.

The rejections are respectfully traversed.

As claims 3, 6, 8 and 10 depend from claim 1, and claims 13, 16 and 20 depend from claim 11, both of which are patentable over Fujimoto et al., claims 3, 6, 8, 10, 13, 16 and 20 are patentable over Fujimoto et al. also.

### **CONCLUSION**

Accordingly, it is urged that the application is in condition for allowance, an indication of which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, Examiner is requested to call Applicants' attorney at the telephone number shown below.

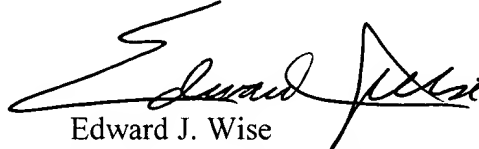
To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including

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extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Edward J. Wise", written over a horizontal line.

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